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July 13, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 24, 2009

Case Number: TSO-0709

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual has held a "Q" clearance since 2002. In July 2008, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address mental and emotional issues, criminal conduct and personal conduct. In addition to the PSI, the LSO requested the individual's medical records and recommended a psychiatric evaluation of the individual. The LSO referred the individual to a DOE psychiatrist for a forensic psychiatric evaluation in August 2008. The DOE psychiatrist diagnosed the individual with recurrent Major Depression. The DOE psychiatrist further opined that the individual's prognosis is worsened by a chronic pain condition (headaches and lower back pain) that has persisted in spite of long-term narcotic prescription use. He added that the individual's depressive disorder has caused a significant defect in his judgment and reliability in the past, and is likely to do so in the future, particularly during periods of interpersonal stress.

In January 2009, the LSO sent a letter (Notification Letter) advising the individual that it possesses reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security

1 / Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (hereinafter referred to as Criteria H and L, respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual called three witnesses, two of his co-workers and an Employee Assistance Program (EAP) psychologist. 3/ He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion L relates in relevant part to information that a person has "[e]ngaged in unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; . . ." 10 C.F.R. § 710.8(l).

3/ The EAP psychologist was not available to testify during the hearing. I reconvened the hearing via phone eight days after the hearing date for the sole purpose of allowing the EAP psychologist to testify on behalf of the individual.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites two criteria as bases for suspending the individual's security clearance, Criteria H and L. To support Criterion H, the LSO relies on the DOE psychiatrist's opinion that the individual meets the diagnostic criteria for recurrent Major Depression, which has caused a significant defect in the individual's judgment or reliability. In addition, the LSO relies on information in its possession that the individual's mental condition has caused numerous defects in judgment and reliability in the past. Specifically, between late 1998 or early 1999 and 2008, the individual has had a total of five inpatient psychiatric treatments with two of them being involuntary. In addition, as recently as March 2008, the individual has attempted suicide. Also, the individual has attempted suicide on at least six separate occasions with the first attempt at the age of 11 or 12. Finally, with respect to Criterion H, the LSO relies on information that on July 29, 2007, the individual was arrested by a local police for suspicion of driving under the influence of alcohol. He was administered Breathalyzer and blood tests. The individual's Breathalyzer test showed no signs of alcohol in his system and yielded a B.A.C. of .00%. However, the results of a blood test administered after the arrest revealed that the individual was under the influence of prescription medications, specifically antidepressants and narcotics. The test results suggested that the individual was impaired while operating a motor vehicle. Accordingly, the individual was arrested for driving under the influence of drugs. At his court hearing, he pled guilty to a charge of careless driving as a lesser included offense of the charge of driving under the influence of drugs. The more serious of the charges was dismissed. The LSO also relies on the individual's 2007 charge of driving under the influence of drugs to support its reliance on Criterion L in this case. *See* Statement of Charges at 1 and 2.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his judgment and reliability under Criterion L. The security concerns associated with Criteria H and L are as follows. First, a mental condition such as Major Depression can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, driving under the influence of drugs itself is a security concern because that behavior can similarly lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

The relevant facts in this case are uncontested. The individual began suffering from depression during his childhood. Around 1988, at the age of eleven, the individual made his first suicide attempt. According to the individual, he was distraught over the death of his grandfather and took an overdose of over-the-counter medications. DOE Ex. 11 at 3. Shortly thereafter, the individual made a second suicide attempt. In 1989, his parents became concerned about his depression and Obsessive-Compulsive Disorder (OCD) symptoms 4/ and hospitalized the individual for his first inpatient treatment. *Id.* At this time, the individual started counseling and began taking antidepressant medications.

The individual next sought psychiatric treatment in 1994 when he was a high school student. *Id.* During his high school years, the individual suffered from low self-esteem problems and continued counseling with a psychiatrist. In 1995, while in college, the individual attempted suicide on two separate occasions by again taking overdoses of over-the-counter medications. As a result of the second suicide attempt in 1995, the individual was hospitalized for one week. At this time, his antidepressant (Prozac) dosage was increased to address his depressive symptoms.

After completing his masters degree, the individual began working for DOE. He was granted his initial "Q" clearance on October 2002. Transcript of Hearing (Tr.) at 10. The individual worked for DOE until 2005 when he left to pursue an advanced degree. While the individual was still depressed during this time, he made no "significant" attempts to commit suicide and continued taking Prozac. In 2004, the individual began taking prescribed Hydrocodone and later Oxycodone, narcotic pain medications, after suffering from severe headaches. From 2005 through 2007, the individual underwent counseling sessions on a regular basis for his depression. In 2007, his chronic headaches became worse and the individual sought the advice of a neurologist for evaluation and treatment. The neurologist made a number of changes to the individual's medication regimen, specifically discontinuing Prozac, and placed the individual on various other medications to treat the depression and headaches. According to the individual, his depression worsened after discontinuing Prozac. DOE Ex. 11 at 5.

In June 2007, the individual began treatment with another psychiatrist for medication management. This psychiatrist formally diagnosed the individual with chronic depression and OCD. He placed the individual back on Prozac and augmented the Prozac with other medications, including lithium, Depakote or benzodiazepines such as Xanax, Valium and Klonopin. This psychiatrist also referred the individual to an intensive outpatient treatment at a local hospital. However, treatment caregivers in the program recommended that the individual participate in inpatient treatment and told him that he would be discharged from the intensive outpatient program (IOP) if he did not accept the referral. According to the individual, he did not feel that he could afford the inpatient program and had "pets

4/ The individual began experiencing OCD symptoms in elementary school. He describes himself as a "perfectionist" regarding his schoolwork. His compulsions included frequent hand-washing and compulsive rituals such as turning lights on and off.

to care for, research to do.” Tr. at 29. The individual stated that he was distraught by what he considered to be an “ultimatum” by the caregivers. *Id.*

In February 2008, the individual attempted suicide once again while in the IOP program. On this occasion, he took an overdose of prescription medications and drank alcohol. DOE Ex. 11 at 6. The individual experienced a blackout because of the overdose of medications and alcohol and could not recall any details of the event. As a result, the individual was involuntarily admitted into an inpatient psychiatric treatment program where he was treated for one week, transferred to an outpatient treatment program and treated for one month. During this time period, the individual tried several antidepressants. In March 2008, the individual attempted suicide by overdose again. This time also, he experienced a blackout and could not recall any details of the episode. Again, the individual was involuntarily admitted into an inpatient treatment program where he was hospitalized for about five weeks until May 2008. *Id.*

In June 2008, the individual returned to his position at the DOE. He was evaluated by a clinical psychologist in the EAP who placed the individual on medical restriction and recommended that he start back to work on a half-time basis. After receiving information from the individual’s supervisor that suggested that he was suicidal, the EAP psychologist recommended that the individual submit to inpatient psychiatric treatment. In late June 2008, the individual voluntarily admitted himself into a program and was discharged three days later. In August 2008, the individual was referred to a DOE psychiatrist for a forensic psychiatric evaluation. Based on that evaluation, the DOE psychiatrist concluded that the individual met the criteria for recurrent Major Depression.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 5/ After due deliberation, I have determined that the individual’s access authorization should not be granted. I cannot find that restoring the individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

1. The Individual’s Testimony

At the hearing, the individual admitted that he has attempted suicide on six occasions and did not dispute that he suffers from recurrent Major Depression and OCD. The individual testified that he has suffered from depression for his entire life. Transcript of Hearing (Tr.) at 18. He further testified

5/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

that he meets with a psychiatrist once every one or two months for medication management. *Id.* In addition to his medication and his meetings with a psychiatrist, the individual stated that he participates in weekly therapy sessions with a licensed professional counselor. *Id.* at 19. The individual testified that he is currently taking a number of antidepressants, including Paxil, Seroquel, Valium and Adderall. *Id.* According to the individual, “the Paxil is an antidepressant specifically for the depression. The Seroquel is prescribed to augment the effect of the Paxil, so it is also prescribed for depression. The Valium is prescribed to treat anxiety attacks. And the Adderall is prescribed to increase [his] energy level and offset the side effects of drowsiness that are caused by some of the other medications.” *Id.* The individual described his depression as “very severe.” *Id.* at 20. The individual explained that his depression affects his self-esteem and his outlook for the future. *Id.* at 23. He further explained that he has a pessimistic or negative outlook on life which had prompted his past suicide attempts. *Id.* The individual testified that the medications he takes are not a cure, but that they are beneficial. He also testified that he suffers from severe back pain and headaches and is taking Oxycontin and Percocet (narcotic pain medications) to treat the pain. *Id.* at 75. Again, the individual testified that these prescription pain medications help, but do not get rid of his pain. *Id.* at 76. He testified that he is trying to wean himself off of the narcotic pain medications. *Id.* at 78. The individual stated that he has recently moved to another state and had not yet acquired new doctors. *Id.* at 22. The individual’s counselor, however, has agreed to continue therapy sessions with the individual by phone. *Id.*

During the course of the hearing, the individual was asked if his depression affects his judgment. He stated the following, “in some people’s opinion an attempt at suicide is bad judgment. I see it as very subjective . . . I suffer from this depression, and I wish I didn’t. I think my life would be a lot more pleasant if I did not suffer from the extent of depression that I do. And I wish I had more effective remedies for my depression. . . . And during my periods of suicidality, suicide appears, to me, as a positive alternative to living the life feeling as badly as I do. Basically, I would rather end my life as opposed to continuing to live it.” *Id.* at 25. The individual further testified that the decision to end his life is the only area in which he believes his judgment is affected. *Id.* He emphasized that his decisions regarding his “work, national security, confidentiality, honesty and work ethic” are all unaffected by his depression. *Id.* Although he acknowledged that his depression sometimes leaves him with a sense of hopelessness regarding the future, the individual reiterated that he would not compromise national security. *Id.*

The individual also described the circumstances which led to his most recent suicide attempts in February and March of 2008. He testified that in early 2008, a psychiatrist at the university he was attending observed that the individual’s depression had worsened and advised him to seek an intensive treatment program outside of the university. *Id.* at 27. According to the individual, he voluntarily checked into an intensive outpatient program, but shortly thereafter the caregivers in that program recommended that the individual participate in the intensive inpatient program. *Id.* at 28. The individual testified that he felt that the caregivers were giving him an “ultimatum” of either checking into the inpatient program or being discharged from the treatment program against medical advice. *Id.* The individual testified that the inpatient program was not feasible for him because of concerns with insurance coverage as well as concerns with responsibilities he had at home and at his university. *Id.* at 29. He testified that it was the stress of this “ultimatum” as well as his depression

that prompted his suicide attempts. *Id.* at 30,81. The individual was questioned about the period from 2002 through 2005 where he told the DOE psychiatrist that he made no “significant” suicide attempts. He explained that during this period, he would occasionally take overdoses of medications with the realization that they could end his life. However, he contrasted these attempts with his more severe suicide attempts in February and March 2008 where “[he] definitely wanted no other option.” *Id.* at 82.

During the course of the hearing, the individual responded to questions regarding his 2007 charge of driving under the influence of drugs. According to the individual, he was not drinking alcohol when he was pulled over. Although the individual was taking prescription medications at the time, he testified that those medications did not affect his driving abilities. *Id.* at 90. The individual testified that he was heading home around midnight after working all day to set-up and clean-up for a friend’s wedding. *Id.* at 98. He further testified that he was not only exhausted from working at the wedding, but he was lost and was driving an unfamiliar vehicle. *Id.* The individual testified that his driving was less than perfect because he slowed down to read street signs. He testified that a passing motorist called the police to report him as a suspicious drunk driver. *Id.*

Finally, the individual testified that although he has no plans or thoughts of suicide in the future, he recognized that he still suffers from severe depression. *Id.* at 110, 111. He stated that at this time he believes he has a good team of doctors addressing his problems and that it is his intention to taper off several of the medications he is taking. When asked about whether he has any mechanisms to deal with stress, the individual stated that his therapy is beneficial and his girlfriend provides emotional support. *Id.* at 112.

2. The Co-Worker’s Testimony

The individual’s co-workers both testified that the individual is a reliable, conscientious and trustworthy person. Co-Worker #1, who has known the individual for about six years, testified that he was aware of the individual’s issues with depression and pain, but would not consider the individual a security risk. *Id.* at 35. Co-Worker # 2 has known the individual since 2002 and considers the individual to be a friend. According to co-worker #2, she testified that the individual appeared to have his depression under control when he returned to work for the DOE in 2008. *Id.* at 61.

3. EAP Psychologist’s Testimony

The EAP psychologist, whose role is to monitor the individual’s care, testified that he met the individual in June 2008 when the individual returned to work at DOE. *Id.* at 156. He further testified that he recommended that the individual be placed on medical restriction and work on a half-time basis. The EAP psychologist testified that after the individual returned to work his management expressed concern that he was suicidal. Consequently, the EAP psychologist recommended that the individual enter an inpatient treatment program. *Id.* at 158. He testified that since the individual returned to work he has maintained his treatment and has not had to go back to a hospital. *Id.* at 160. The EAP psychologist further testified that the individual has made good

progress over the last several months. *Id.* at 161. However, he testified that he agrees with the DOE psychiatrist's diagnosis of recurrent Major Depression for the individual. *Id.* at 165. The EAP psychologist stated that he believes the individual's depression is in partial remission and is in the mild to moderate range at this time. *Id.* Although he testified that the individual's prognosis is fair to good, he opined that the individual's chronic pain complicates his diagnosis and the possibility of recurrence of another depressive episode is high. *Id.* at 177-190. Finally, the EAP psychologist testified that the individual is more emotionally stable now than when he first met him. However, he testified that the individual's case is complicated and that his prognosis is dependent upon the individual maintaining his current model of treatment. *Id.* at 192.

4. The DOE Psychologist's Report and Testimony

The DOE psychologist stated in his August 2008 Psychological Report that the individual met the criteria for recurrent Major Depression, which has caused a significant defect in judgment in the past. DOE Ex. 11. He further stated that the individual has had over six suicide attempts and that during two of these suicide attempts the individual has experienced a blackout from alcohol and prescription medications consumed. The DOE psychologist stated that these episodes evidenced a significant defect in his judgment and reliability. *Id.* At the time of his evaluation of the individual, he noted that the individual's chronic depressive disorder had a poor prognosis given the fact that he has required five inpatient hospitalizations two of which were involuntary (with the most recent occurring two months before his evaluation). *Id.* He further noted that the individual's prognosis is worsened by a chronic pain condition (headaches and low back pain) that has persisted in spite of long-term narcotic prescription use. *Id.* The DOE psychologist opined that the individual's depressive disorder has caused a significant defect in his judgment and reliability in the past, and is likely to do so in the future, especially during periods of interpersonal stress. *Id.*

After listening to the testimony of the individual and his witnesses during the hearing, the DOE psychologist testified that he had not heard any testimony that would change his diagnosis. *Id.* at 123. He testified that there were several new pertinent factors addressed during the hearing that caused him concern. *Id.* The DOE psychologist stated that during the course of the hearing he learned that two more of the individual's psychiatric hospitalizations were involuntary. *Id.* He testified that this new information is significant because "an involuntary hospitalization indicated that a physician has legally ruled that your judgment is impugned, is bad . . . and legally overrides your judgment in a very drastic way, namely they lock you in a psychiatric hospital against your will." *Id.* at 124. The DOE psychologist further stated that the fact that involuntary hospitalizations occurred four times, not two times was significant to him. *Id.* In addition, he testified that the individual's overdose during one of his suicide attempts caused hallucinations which clearly impaired the individual's judgment. *Id.* He also noted that he is concerned that the individual is currently taking prescription Adderall, an amphetamine, that can cause hallucinations in overdose. *Id.* The DOE psychologist stated that blackouts were involved in two of the individual's suicide attempts which continue to cause him concern about the individual's judgment. *Id.* at 127. During the course of the hearing, the DOE psychologist further testified that he is concerned about the individual's high dosages of prescription medications and believes the individual is on the right path in working towards tapering off the narcotic prescriptions to manage his chronic pain. *Id.* at 128.

He noted that narcotics do not help for chronic pain but rather cause many side effects. *Id.* He further noted that narcotics can exacerbate depressive episodes. *Id.* at 129.

The DOE psychologist also testified about the individual's prognosis. Although he believes that the individual has a good long term plan to manage his depression, he opined that the individual still has a mental condition that causes or may cause a significant defect in judgment or reliability. *Id.* at 131. According to the DOE psychologist, the individual's serious depressive disorder "has caused a number of serious suicide attempts with serious judgment implications, and the best predictor of the future would be the past. If there have been six in the past, [the individual's] at risk for future episodes, especially when under a lot of stress." *Id.* He testified that other factors that make the individual's prognosis a bit more guarded are the individual's chronic pain and use of narcotic prescriptions. *Id.* at 132.

5. Hearing Officer's Evaluation

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists and other mental health professionals regarding whether mental illnesses cause a significant defect in judgment and reliability. In this case, I accorded substantial weight to the opinion of the DOE psychologist who testified at the hearing that the individual's recurrent Major Depression causes, or may cause a significant defect in his judgment and reliability. Moreover, from a common-sense perspective, the following factors militate against restoring the individual's access authorization. Although the individual is currently complying with his current treatment plan and was very forthright about the challenges he faces in dealing with his depressive disorder, it is clear that the individual is still in a very vulnerable state. As stated above, the individual testified that "the decision to end his life is the only area where in which he believes his judgment is affected" and emphasized that his decisions about his work and national security are unaffected by his depression. Tr. at 25. However, it is evident that the individual's suicide attempts which have included blackouts and hallucinations pose a significant risk to the individual's judgment and reliability. While the individual testified that he currently has no intention of attempting suicide in the future, I am not convinced that the individual has a stable support network at this time to assist him in alleviating stressors in the future. The individual has recently moved to a new state and has not yet obtained new doctors to help him maintain his treatment plan. Although the individual intends to continue his therapy sessions by phone with his counselor, it is imperative that the individual locate a psychiatrist to monitor the continuous effectiveness of his antidepressant medication and his chronic pain. The individual's physical demeanor during the hearing suggested that the individual is still suffering from chronic pain, a concern given the DOE psychologist's opinion that chronic pain worsens the individual's prognosis. Finally, I am persuaded by the opinion of the DOE psychologist that the individual's depressive disorder causes or may cause a significant defect in his judgment and reliability and that there is a risk of future suicidal episodes. I am also persuaded by the opinion of the EAP psychologist that there is a "high" risk of recurrence of another depressive episode. The record clearly supports the DOE psychologist's judgment and conclusion. Based on these reasons, I must find that the individual has not mitigated the security concerns associated with his depressive disorder at this time.

With respect to the Criterion L security concerns, the DOE cited a July 2007 charge of driving under the influence of drugs. The individual was pulled over for suspicion of driving under the influence of alcohol and arrested. However, the individual was determined to be actively under the influence of prescription medications and impaired while operating a motor vehicle. To mitigate the Criterion L concerns, the individual testified that he was not under the influence of alcohol 6/ nor did his use of prescription medication affect his driving ability. Tr. at 93. Rather, the individual testified that he was extremely tired from helping with a friend's wedding, was lost and was driving an unfamiliar vehicle, all factors which contributed to less than perfect driving. *Id.* The Criterion L concern here relates to the individual's reliability, specifically whether the individual's use of prescription medications impairs his driving. While the individual believes his medications do not affect his driving ability, the evidence in the record suggests otherwise. As stated earlier, the July 2007 charge was prompted by a passing motorist who called the police to report the individual's erratic driving. In addition, at the time of the individual's arrest, police administered a blood test which revealed that the individual was under the influence of prescription medications and was not able to operate a vehicle safely. This issue of the individual's reliability goes to the heart of the Criterion L security concerns. I believe these concerns are inextricably intertwined with the judgment and reliability concerns found in Criterion H. Until the individual has sufficiently mitigated the security concerns associated with his depressive disorder, which affect his judgment and reliability, I cannot find that the individual has sufficiently mitigated the LSO's concerns under Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE to raise serious security concerns under Criteria H and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria H and L. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be

6/ There was never a charge that the individual was driving under the influence of alcohol.

restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: July 13, 2009